

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM J000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003281

FILED: _____

MARY HAYES

JAMES L TANNER

v.

RICHARD THROCKMORTON

ARIEL WORTH

REMAND DESK CV-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This appeal from an order on November 9, 2001 continuing an Injunction Against Harassment after a hearing has been under advisement. This Court has considered and reviewed the record from the Scottsdale City Court, and the Memoranda submitted by counsel. Counsel for Appellant has requested oral argument in this matter and it does not appear to this Court that oral argument would be helpful.

IT IS THEREFORE ORDERED denying Request for Oral Argument.

A Petition for Injunction Against Harassment was granted by the trial court on November 9, 2001 after a hearing. Appellant, Richard Throckmorton and Appellee, Mary Hayes are neighbors living within the same subdivision within the City of Scottsdale. Appellant is the property manager who is

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM J000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003281

responsible for overseeing maintenance of common area landscaping within the subdivision that both parties reside within. At the hearing, Appellee Mary Hayes described incidents which occurred on October 10, 2001 at her residence. After the trial court issued the Injunction Against Harassment, Appellant filed a timely Notice of Appeal.

The first issue raised by Appellant concerns whether sufficient evidence was presented that a series of acts occurred which would warrant the issuance of the Injunction Against Harassment. A.R.S. Section 12-1809 provides in Section R that "harassment" means:

... a series of acts over a period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose.

Appellant argues that the only acts that Appellee testified about before the trial court occurred on October 10, 2001. Appellee argues that no evidence of a "series of acts" was presented because no series of acts occurred in this case. However, the record does not support Appellant's contentions. The record shows that a series of acts did occur on October 10, 2001. The statute clearly provides that the series of acts may occur "over any period of time".¹ The series of acts which occurred October 10, 2001 admittedly occurred during one day. Appellant also contends that though Appellee complained within her petition of several acts of harassment, she only testified at the hearing about one.² The record does not support this contention of the Appellant, either. The record reflects

¹ See A.R.S. Section 12-1809(R).

² Appellant's Opening Memorandum, at page 4.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM J000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003281

Appellee's testimony about the "second time" that Appellant came back to her residence.³ The Court finds no error.

The next several issues raised by Appellant concern the sufficiency of the evidence to warrant the trial court's conclusions and order continuing the Injunction Against Harassment in full force and effect. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁴ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.⁵ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.⁶ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁷ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁸ The Arizona Supreme Court has explained in State v. Tison⁹ that "substantial evidence" means:

³ See exhibit E of Appellant's Opening Memorandum, at page 1.

⁴ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁵ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁶ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁷ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁸ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁹ SUPRA.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM J000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003281

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹⁰

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Appellant also argues that the acts of harassment may not be lawfully enjoined because Appellant is the property manager of the condominium complex in which Appellee resides. Appellant can claim no privilege to commit acts of harassment. There is no such privilege. The issue whether the acts of harassment committed by Appellant were lawful acts is a question of fact for the trial judge. This Court has previously made an finding that the trial court's determination was supported by substantial evidence.

IT IS ORDERED affirming the judgment of the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings in this case.

Both parties have requested attorney's fees and costs pursuant to A.R.S. Section 12-1809(N). Good cause not appearing in Appellant's request,

IT IS ORDERED denying that request.

IT IS FURTHER ORDERED that counsel for Appellee shall submit an Application and Affidavit of attorney's fees and costs

¹⁰ Id. At 553, 633 P.2d at 362.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM J000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003281

incurred in this appeal to this court with copies to opposing
counsel no later than August 9, 2002.

IT IS FURTHER ORDERED that counsel shall submit a form of
order in addition to the Application and Affidavit.